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COMMITTEE ON JUDICIARY

February 8, 2006

LB 886, 1263, 1144, 1224, 1113, 1196

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 8, 2006, in Room 113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 886, LB 1263, LB 1144, LB 1224, LB 1113, and LB 1196. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Ray Aguilar; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Ernie Chambers.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our eighth day of committee hearings. We have six bills this afternoon. I'm Pat Bourne from Omaha. To my left is Senator Aguilar; to my immediate left is Laurie Vollertsen, the committee clerk; and to my right is the committee counsel, Michaela Kubat. I'll introduce the other members as they arrive. Please keep in mind that as the afternoon goes on, members will be coming and going. We're on legislative time, if you've noticed that they don't arrive promptly. But anyway, they'll be coming and going throughout the afternoon to testify on other bills. So if they happen to leave while you're testifying, don't take offense. They're simply conducting other legislative work. If you plan to testify on a bill this afternoon, we're going to ask that you sign in in advance at the on-deck table there. Please print your name clearly so that the transcriber can enter it into the permanent record. Following the introduction of each bill, I'll ask for a show of hands to see how many people plan to testify on a particular measure. The senator will open. We'll take proponent testimony, then opponent testimony, and then neutral testimony, and then the senator can close if he or she cares to. When you come forward to the table here, please clearly state and spell your name for the benefit of the transcribers. All of our hearings are transcribed. Your spelling of your name will help the transcriber immensely. We have a large number of bills here in the Judiciary, and because of that, we use the timing system. Senators introducing bills get five minutes to open, three minutes to close if they choose to do so. All other testifiers get three minutes exclusive of any questions the committee may ask. The blue light goes on at three minutes, then when the red light comes on, we ask you to wrap up your last thought. The rules of the Legislature state cell

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phones are not allowed, so if you have a cell phone, please disable it. Also, reading someone else's testimony is not allowed. Well, if you have a letter or something from an organization, we'll allow you to submit it. We'll put it in as part of the permanent record, but we'd just as soon you didn't read it. And again, I'll introduce the other members as they arrive. With that, we have Senator Fischer here to open on Legislative Bill 886. Welcome.

LB 886

SENATOR FISCHER: Thank you. Thank you, Senator Bourne and Senator Aguilar. My name is Deb Fischer, F-i-s-c-h-e-r, and I represent the 43rd District here in the Legislature. The purpose of LB 886 is to allow for jury trials in child custody cases. Currently, this is not allowed under Nebraska law. The bill remedies this and grants statutory right to a jury trial in these types of cases. I've had several constituents contact me regarding their child custody cases. They feel that the opportunity to request a jury trial would have helped them in their situation. I will let them present their arguments as to why this bill needs to be advanced. With that, I will waive closing, and I thank you. And if you have any questions on this, I'd be happy to try and answer them.

SENATOR BOURNE: Thank you. Are there questions for Senator Fischer? Seeing none, thank you.

SENATOR FISCHER: Thank you.

SENATOR BOURNE: Would the first testifier in support of this bill come forward? And again, those folks that are here to testify in support of the bill--hopefully, you've already signed in--and then just come on forward. I've been reminded here, can I have a showing of hands of those folks here that want to testify in support of the bill? I see three. In opposition? I see three. Any neutral testifiers? I see one. That's for the introducer of the next bill so he can tell how long he's got to get down here. With that, welcome to the committee.

TIM BUSSINGER: Thank you for allowing me here. When do I go ahead and start?

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SENATOR BOURNE: Whenever you're ready, if you'd just state your name and spell it for the record, that'd be great.

TIM BUSSINGER: My name is Tim Bussinger, B-u-s-s-i-n-g-e-r, and I'm from Bassett, Nebraska. And I went through the judicial process on a divorce and a custody battle, and I feel I did not get a fair shake in the deal because of bias and an activist judge that took his own concerns over anybody else's. And I feel a jury, if we had a jury trial for it, I would have got a fair shake in the deal. Right now, my kids are in a situation I don't want them in, but it costs so dang much money to get them to go back and try to fight it again, and I know what's going to happen. I'm for this because I think we need to limit the biased and active judges in their decisions. And if we have a jury trial, the decisions will be made by a jury and not a judge. Not one man can make a decision on the well-being of children in this state. And a well-instructed jury, when they go--I've never been on jury duty, but if you go, I'm sure your instructed of the law at that time--and a well-instructed jury will uphold the law, I believe, as the state of Nebraska wants it upheld. I do believe it's in the best interest of the children also in our state to get them in a good situation where a jury of your peers would know that. And one judge can, one man or woman, who is ever the judge at the time, cannot make it, a sound decision, I don't feel based on one-hour of testimony. And, does that mean I've got one minute left or? So I think it's in the best interest of children and best interest for Nebraska, also, because it costs a lot of money to put these children that are going into single parent homes and, or in a situation you don't want your children into so there's trouble brewing in the future. And I feel as a citizen of Nebraska and my tax dollars and best use, I think that's what would be in the best interest. I guess that's my three major points. I could talk for days on this, but, if there's any questions, I'd...

SENATOR BOURNE: Sure. Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. Thanks for coming today, mister. Appreciate you being here. This really is an important issue, and I'm not sure as far as the judicial district that you're from and how exactly things

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are done. But I would point out, in several areas of the state, Omaha, Lincoln, Grand Island, a lot of the judicial districts are going to a more speciality form of court rooms. And in a situation like this, a particular judge would be thoroughly trained in child protective issues. You know, somebody that just hears these cases all the time, would have much more expertise than a random jury, you know. And personally, I've seen how some of those things work, even at the level of drug courts throughout Nebraska, for instance. Specific judges deal with those cases. Their expertise really stands out, and I just want to point out that to throw all that away at this point would really, in my mind, be taking a step backwards. And I understand your feelings if you think you, you know, got a short end of a stick with a particular judge, but there's a lot of great things happening out there in western Nebraska as well.

TIM BUSSINGER: Can I comment on that?

SENATOR AGUILAR: Pardon me?

TIM BUSSINGER: Can I comment on that?

SENATOR BOURNE: Sure, go ahead.

TIM BUSSINGER: I agree with you. There are some judges out there that probably do have expertise in that area, but I think the majority of them do not. In our 8th District, for example, our judge has never been trained in child psychology or anything like that. And...

SENATOR AGUILAR: One thing you will see come down the pike, too, because the Chief Justice of the Supreme Court of Nebraska has already made the statement that he really wanted to go to a system of specialty courts, and that will be statewide, and everybody will have the same opportunity throughout the state, as well as it should be. It shouldn't just be select communities.

SENATOR BOURNE: Thank you. The committee's been joined by Senator Pedersen. Are there any further questions? So Mr. Bussinger, just so I can clarify, you felt that you weren't heard in a one-hour court hearing with a judge and you feel that, you know, if a group of your peers, the jurors, would look at the issue, it might have, the outcome

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might have been a little different and the situation that your children are in today, you're thinking if this had been in place, it would have a little different, life would have been a little better for them, the outcome would have been better for everybody involved?

TIM BUSSINGER: I think a lot, yeah. I feel that when I went into the courtroom, the decision was already made. And we just went through the process.

SENATOR BOURNE: Went through the motions. How many children do you have?

TIM BUSSINGER: Three.

SENATOR BOURNE: Three?

TIM BUSSINGER: Yeah. And I'm not the only one. I've talked to several people and the state of Nebraska that feel the same way, that the judges have way too much control in this situation.

SENATOR BOURNE: And the reality is, it's like if you don't get it right the first time, to go back...

TIM BUSSINGER: Yeah.

SENATOR BOURNE: ...costs you a new car.

TIM BUSSINGER: Costs you more and the judge is not going to change his mind.

SENATOR BOURNE: Yeah. Good enough. Further questions? Seeing none, thank you.

TIM BUSSINGER: Thank you.

SENATOR BOURNE: Appreciate you coming down to testify. Next testifier in support of this bill. Welcome.

GARY RUSSELL: Good afternoon. My name is Gary Russell, R-u-s-s-e-l-l. I live in Broken Bow. My support of this bill is a result of watching judges repeatedly ignore situations where children are being mentally and physically abused. When was the last time you read a newspaper when

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there wasn't something in there about an abused child? It hasn't been that long ago the story was right here in Nebraska. We hear all the time how family, neighbors, friends, teachers are all supposed to be on the lookout for abuse and problems in children's lives, and yet when a family member from the noncustodial side of the family reports something, you're pretty much ignored by the courts. There are countless web sites dedicated to noncustodial parents. There are thousands of entries from noncustodial parents writing about biased judges. There have been two children in my family try to commit suicide because for over 15 years, judges allowed the mothers to brainwash these children and deny the fathers visitation. One child had his mother die. The other child was molested by her mother's boyfriend. The two judges were told many times what was happening, and yet they allowed the mothers to convince the children their fathers hated them and wanted nothing to do with them. There's a father in Broken Bow that has been threatened by a judge with contempt of court if he doesn't give his ex-wife his four-year-old child the next time she shows up at 2 o'clock in the morning drunk and in a rage over her last love affair. The father presented police documentation this was happening. The guardian ad litem told the father he was treating his child worse than a dog. He should have spent the money on his little girl instead of a lawyer. Who in their right mind would turn their child over to an intoxicated person so they could drive off with them? And yet this judge is ordering this man to do just that. I don't think anyone can argue the point there are times when children get abused at home, and then turn around get it again by the courts. I guess the question I've been writing Senator Fischer about is, what are we going to do about it? The idea of custody by jury is not new. Texas has passed legislation that allows custody to be decided by jury, and I've heard Florida also has a system where parents can request jury trials. I first heard of the idea when it was presented in a documentary last fall that showed on Nebraska Educational TV. They interviewed several children that had been returned to their fathers many times by the courts. One child told of how his guardian ad litem had yelled at him, called him a liar, and then just told him to shut up unless he could tell the truth. The person that was appointed to look out for this child's interests got up in court and told the judge everything is fine and the child should go back to the father. Every one of these children

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that they had interviewed ended up running away and lived underground until their 18th birthdays. The question I present to you is, what are we going to do about this? Jury trials, I feel, would be a step in the right direction. Yes, they're going to be a little more expensive. But if it was your child that you felt was, their safety was at risk, wouldn't you be willing to spend just a little more money when you got your divorce? If custody became an issue in the future, I would hope the second jury wouldn't be influenced by what the first jury decided. Judges seem to have a stake in not being wrong. To change their custody rulings, they would first have to admit they were wrong. A child's safety and happiness shouldn't depend on someone being able to admit they made a mistake. In closing, I don't know if this will ever get out of committee because, you know, there's some issues there with the expense and everything. But I really would like to see a committee take a look at the problems. We've got some real problems with these kids. When they get caught in the crossfire between two parents that, you know, they're in trouble. I didn't even go into what really got me started on this was my daughter-in-law's case. She lost her kids to a man that, he's got a 15-year history of sexual abuse and, I mean, it's just nuts. It's hard to believe, myself. But, and if you have any questions, I'd certainly be glad to answer them.

SENATOR BOURNE: Are there questions for Mr. Russell?  
Senator Aguilar.

SENATOR AGUILAR: Yes, thank you for coming today. I'd first just like to say that cost has never been an issue on whether or not something comes out of this committee. That's not something that we use as criteria here. You know, it's more importantly about the safety of the children and issues of that nature. This could be, and I can't speak for the chair, but this could be a good example of something we need to do an interim study on down the road.

GARY RUSSELL: Um-hum. I would really like to see that happen because, you know, I've never been really touched myself by divorce. But yet I have seen so many times when these kids are beat up mentally. You know, the two kids that I talked about and they tried to commit suicide, there's something that happened over a 15 year period where these kids literally were convinced their fathers wanted

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nothing to do with them. And, you know, you have two sisters-in-law here, and I know they got together and discussed how to do this because they did it exactly the same. Father would drive two hours to go pick up their kid on Friday afternoon. They'd get there and the kid is in Grand Island. Now, Grandma's got him and he won't be back until Sunday. What are you going to do? You can't do anything about it. You tell the judge about it and he says, well, that's something you're going to have to settle. You know, you're going to have to come to, you know, some kind of agreement with your ex-wife. You're not going to come to an agreement with a woman that's pulling that, or a man. On the Internet, I read a deal one time where this man, he was asking what people thought if he could get away with denying his wife her visitation because she didn't have a job. Now here's a guy just trying to cause trouble. You know, he's using the kid as a weapon against his ex-wife. Sir, it's not just one gender doing all the damage. It is on both sides. And it's really something that I think this state, it would do good to sit down and, like you say, talk about it because there are problems out there. And these kids, my daughter-in-law's little boy, is a future problem in the making. This state is going to have to deal with that child. He's six years old, he's an angry little boy just because of what his father puts him through.

SENATOR AGUILAR: Just for the record, are we talking about the same judge in these two cases?

GARY RUSSELL: No. No. There's three different judges. There's two judges that dealt with my niece and nephew, and then my daughter-in-law, it's a different judge. So it's not just one judge. It's like where I'm from, in Custer County, I don't even know who's getting a divorce and I can tell you how the next ten custody cases are going to turn out. You know, that shouldn't be. You know, when you walk into court, it should be a blank slate, and everybody ought to be equal. And I don't know why, you know, I know it's tough to be a judge. Four years ago, I had the utmost respect for these people because I know, you know, it's tough. But in the last four years, you start looking at this and you think back and you think, my gosh, what are we doing? You know, we got to look at this, so.

SENATOR BOURNE: Thank you. We've been joined by Senator



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Flood from Norfolk. Are there further questions for Mr. Russell? Mr. Russell, let me ask you this. It seems like you're pretty well informed on the issue. Senator Aguilar touched on these new courts, these family courts, or... I know Douglas County, they have a special court that deal with this issue. Now, I don't believe they have jury trials for the custody. But do you think that helps or it's a step in the right direction or?

GARY RUSSELL: I think it'd be a step in the right direction. When we were at the trials that my daughter-in-law's oldest daughter told the doctor she'd been molested by my daughter-in-law's ex-husband, and when we sat there in court and I heard the attorney for this guy telling the judge, you know, the kid's lying because she uses the same words every time she tells the story. My wife was sitting there with me, and my wife has a special ed degree, she has an elementary degree, she has a master's degree in elementary education, she knows kids. And she says, well, that's the only way a kid can do it because they don't have the word bank to do anything else. And yet this lawyer is telling this judge, and the judge is sitting there, yeah, yeah, yeah, and the lawyer is saying this kid is lying because they use the same words. And there were several times during the trial that the attorney said, you know, this is the way it is because this is the way the kid, this is what the kid said, or this is the way the kid acted. And my wife, I mean, she just nailed him right. She couldn't stand up in court and tell the judge any different, but she says the guy is wrong, and the judge doesn't know any better. The judge doesn't have a degree in child psychology, so, you know, these judges really, if you have a court where the judge is trained and really knows children, I think that'd be a great step. I think that would be good.

SENATOR BOURNE: Let me ask you this real quick. And you had talked about a documentary that you saw on, it was on state TV. Do you remember the title of that or how long ago?

GARY RUSSELL: You know, I have a copy of it, and I was going to make copies of it, and I thought, well, probably get copyright infringement problems there, so I didn't bring it down. But I'd send it to you. I mean, I'd...

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SENATOR BOURNE: Well, if you could just tell us when you saw it or the title, we can get it, so...

GARY RUSSELL: You know, I'm guessing it was in October.

SENATOR BOURNE: Of last year.

GARY RUSSELL: And it was in last fall of October, and it was, I felt it was anti-father...

SENATOR BOURNE: Oh, okay.

GARY RUSSELL: ...but, in reality, what I took away from it was that, you know, the judges should listen to these kids. You know, the guardians should have listened to these kids.

SENATOR BOURNE: Yeah. One reason I bring it up is, you know, this is an issue that we constantly here.

GARY RUSSELL: Um-hum. Oh yeah.

SENATOR BOURNE: I mean, we have bill after bill introduced, and rightly so. I'm not saying we shouldn't, but I think maybe it is an issue that we need to take up as a committee and look at a little closer.

GARY RUSSELL: Yeah, I would like to see, you know, districts for this. You know, have a court in Scottsbluff, one in Grand Island, one, you know, throughout the states that handle custody issues and, you know, if they were staffed with really knowledgeable judges that, you know, really had the background in children, I really think that would be great.

SENATOR BOURNE: It'd be a good start. Further questions? Seeing none, thank you. Appreciate you taking the time.

GARY RUSSELL: Thank you.

SENATOR BOURNE: Next testifier in support of LB 886. And again, are the, have you signed in? Okay, great. Are there any other proponents after this gentleman? Okay, if the opponents would make their way forward and sign in. Welcome.

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LES VESKRNA: (Exhibit 2) Thank you. My name is Les Veskrna. I am the executive director of the Children's Rights Council of Nebraska. My last name is spelled V-e-s-k-r-n-a. Children suffer disproportionately when they are unreasonably denied an opportunity to maintain a meaningful relationship with both of their parents after divorce or separation. Not all children suffer. In fact, some benefit when they can be taken away or shielded from an abusive situation or parental relationship that's highly "conflictual." I think we can argue endlessly about how to deal with children infected by divorce, but it all boils down, at least in my mind, to the fact that we've devoted little thought and few resources to separating the former, which is much more common, from the latter situation. Between the Governor's Task Force and our media, we've had an enlightening view of just how we provide for and protect our children. One of the most obvious conclusions from this is the realization that in far too many instances, decisions, programs, and services that affect the well-being of our children are just not given the time and resources that they should or could be given. Our child custody system is not unlike the rest of our child-centered establishments. Our courts tend to treat divorcing parents with disdain and impatience, and not as potential allies and essential resources for their children. Even married parents have significant disagreements about parenting, but their disagreements are resolved within the context of their relationship. However, divorced parents are placed in a difficult dilemma because they have a much different relationship and we fail to provide them, as part our public or judicial policy, an alternative context with which to resolve significant disagreements about their children except our very adversarial legal system. Many judges, when faced with two parents who cannot agree in the court room are pretty quick to resort to a solution which in some way sacrifices a child's relationship with one parent. Parenting plans are a failure because they are not a requirement in every divorce case, and in most instances, they are simply a plan for visitation and not a plan for parenting. Domestic violence advocates strongly oppose shared parenting, but yet we do not routinely screen parents for domestic violence before custody decisions are made by the court. Through a variety of social service entities, we provide some extraordinarily expensive and time-consuming services and programs to at-risk children or children in

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crisis or parents who are failing, but yet we offer no help to good parents who only want to have a meaningful relationship with their children so they won't be at risk or in crisis because of their absence. I have mixed feelings about this, but I think a jury trial is a hard way, but it's better than no way when you happen to have a judge assigned to your case who happens to believe that two parents are not essential to their children. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Doctor, is it Veskrna?

LES VESKRNA: Veskrna, um-hum.

SENATOR BOURNE: Are there questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Dr. Veskrna, thank you very much for your testimony. You and I have communicated quite often, and I would like you to maybe, I'm not convinced jury trials are the way to bring parents together to cooperate for the purpose of raising children, divorced parents. But you talked about parenting plans, and something you said, I think, needs to be explored. Too often, the conversation is on visitation, not parenting, co-parenting, joint legal custody, joint physical custody where allowed by the court. It's my understanding Douglas County is requiring mediation or some form or variation thereof, which I think is excellent. You and I have talked about California. Talk about what a parenting plan means to you. What kind of things will they be discussing, the two parents?

LES VESKRNA: In a parenting plan, I think probably the most essential thing is parents need to decide what to do when they disagree. Do they go to mediation? Do they default to one parent? Do they, are they divided according to certain areas like, I'm a physician; maybe my decisions might default to healthcare concerns for my infant. If my former spouse was a teacher, she might make decisions regarding education. Decisions need to be made about activities and what takes priorities. I think the whole issue of joint parenting is doomed to failure unless we give parents a mechanism to resolve disputes that is not adversarial, that does not involve going to the courts.

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SENATOR FLOOD: I guess along those lines, a lot of times courts will use like the standard visitation guidelines. Like the 7th Judicial District has visitation guidelines. In my opinion, those should only be used in cases where you absolutely cannot get the parents to come to the table. But visitation doesn't just mean two weekends a month across the state. It can mean Wednesday night dinner with dad, you know, three weekends a month. I mean, it can mean different things if the parents want to work on that kind of a relationship. It doesn't have to be this default. Do you find that to be a problem?

LES VESKRNA: Yes, it is a problem. I have a lot of people tell me that their former spouse tells them, when it comes time to discuss parenting time and custody arrangements, that they're going to "give" them the minimum allowed by the state, which is essentially every other weekend or four days a month. And I know there are some variations on that, including summer holidays and sometimes some time during a weekday in between. But essentially, it amounts to four days a month. And what should be a default when parents absolutely cannot agree has become the standard. And I think that's wrong.

SENATOR FLOOD: Last question, and then I promise I'm done, but you and I have talked about California. And I know we've talked specifically about it. I don't know if you can talk, you know, comprehensively about what is different in California, but if you could, would you explain that? The system they have out there where they, you only come to court after you've put together a parenting plan. If you can't put it together, then someone is penalized for not cooperating.

LES VESKRNA: I don't know a lot about California's custody laws. I know that California is considered a model. No-fault divorce originated in California and spread throughout the country. And California, as a consequence to the failures associated with no-fault divorce, then developed joint custody laws. And so they're, I think the state of California is further along in the process of developing tools for the court to use, tools to keep people out of court, than virtually any other state in the country. And this doesn't belong in court. And this is something that, again, I always tell people, that when you're married,

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you resolve disagreements within the marriage contract. But when you no longer can be married or live with one another, there needs to be some mechanism to resolve contracts, and this doesn't belong in court. And I don't think judges like having this in their courts, and I think some of the worse cases that judges have involve custody. They're messy, but they shouldn't get that far. There should be resources available to parents.

SENATOR FLOOD: And just for the record, if domestic violence exists in the marital relationship or toward a child, that does not qualify somebody to be a parent.

LES VESKRNA: Absolutely. In California's custody laws, the only reason for not having shared parenting would be if there was abuse or neglect involved. There has to be a serious reason for a parent to not have continuing contact with their child or children after divorce or separation.

SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Further questions? Senator Aguilar.

SENATOR AGUILAR: Thank you, Senator Bourne. After this hearing, you said something at the end of your testimony that made me somewhat curious. You said something about the judge too often will come away with the opinion parents should live apart, and that bothered you somewhat. I guess my concern is, what would make you surmise that the jury wouldn't come to that same conclusion?

LES VESKRNA: There's nothing. The jury may come to that same conclusion. Joint custody is not the answer. Neither is sole custody. But in our state right now, because we don't have rules that encourage joint custody and make it possible, we see primarily sole custody. So I don't think, there are a lot of instances that joint custody or shared parenting is just not appropriate. And the juries can come to the same conclusion that the judge is. Problem with the jury is that not only do you have, as we do now, we have to convince a judge whether joint custody is appropriate, if we go to jury trial, we have to convince the entire jury, or a majority of the jury that joint custody is appropriate. So, yes, the goal is set a lot higher with a jury trial, but I think the point is that this may be an option for parents,

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or a parent when they've got a judge who absolutely does not approve of shared parenting.

SENATOR AGUILAR: And just for the record, I'd say some judges think the other way. (Inaudible)

LES VESKRNA: Exactly.

SENATOR AGUILAR: Thank you very much.

SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate your testimony. Are there any other testifiers in support of this bill? Okay, we're going to move to opponents. First opponent. Are there other opponents in the audience that have, okay, you're signing in? Okay. Welcome.

JIM LIVINGSTON: Thank you, Senator Bourne, members of the committee. My name is Jim Livingston. I am a district judge in the 9th Judicial District in the state of Nebraska with my primary domicile being in Hall County, Nebraska. We're here today and on behalf of the Nebraska District Judges Association to indicate a deep concern about this bill and the ramifications therein. I have sat and listened to proponents, and I would be the first one, as I'm sure my colleagues would, to say that there is no one putting the soles of their feet on the face of the earth that is infallible. And when people come before us in child custody circumstances, and there is probably nothing that is more difficult that we do, there has to be a decision made. And that decision has to be made in the best interest of the child or the children. I have been hearing these types of cases for close to 14 years now, and the twist that is now before you in LB 886 does not shed any light upon the circumstances that may or may not be available in each and every individual particular case. The people who have testified as proponents to this bill talk about circumstances that do not occur. And for every circumstance, as I listen, I have been involved in circumstances where those things have occurred, where joint custody has been ordered, when there was a custody fight and the parents did not agree upon who should have custody. There has been circumstances in which custody was granted to one parent, and subsequently changed to the other parent. So it is not across the board rules and regulations. It

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depends on the facts and circumstances and evidence presented in each individual case. To allow this to go to a jury does not take into consideration the problems that we have in making these cases go forward and getting resolution of these cases in the best interest of the children. Right now, on a child custody case that is disputed, I would give you a good guesstimate that you are almost going to double the time that it takes to resolve these issues. As they are resolved now, if the decision is not palatable to one or both of the parties, there's certainly numerous opportunities to modify that decision, either through the appellate courts if the parties feel that a judge is biased or did not decide it based upon appropriate decision on the evidence presented, or through modification through the trial court level. In Hall County, which I can speak of with the most authority, we have had last year, in the year 2005, we had 46 jury trials in the district courts of Hall County, Nebraska, with two district judges. I had my clerk of the district court draw up the paternity cases, the reopened paternity cases, the new dissolutions file, the reopened dissolution cases, and if 10 percent of those cases went to a dispute concerning custody of a child, that would add an additional 74 juries a year to the case load in Hall County, Nebraska. Scheduling those and moving those cases through the justice system would just be a great burden. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Judge Livingston? Senator Aguilar.

SENATOR AGUILAR: Just to say that I know your time ran out there, and if there was another point you wanted to make.

JIM LIVINGSTON: No. Thank you, Senator.

SENATOR BOURNE: You're going to ruin our reputation, Senator Aguilar. (Laughter) Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Judge, thank you for your testimony. And I know where you're coming from on the jury trials. I appreciate your testimony. What can we do, and I guess this is the complaint I've got to surmise from some of the testifiers, they go to the door at 7 o'clock on a Friday night to pick up their child. Haven't seen him for two weeks. Mom or whoever the custodial parent



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is doesn't have the child ready to go, or the child is not there, and for some reason, they lose out on visitation, or maybe they don't get Christmas or Easter. And they stew about it, they go to their attorney, and then they file for, you know, an action to hold the other side in contempt, you know, order to show cause, or whatever it may be. And after they answer that and we're down the road six months, then, you know, seven months, the lawyer gets a continuance, it's almost not worth fighting any more because during that whole time, it just gets worse. What could we do as a state to amend our laws to give an upset, noncustodial parent a quicker opportunity to have that reviewed by a court. And I guess this is what we struggled with last year. You know, you've got a protection order where you can go and get a protection order and it's reviewed within 10 days. But if understand some of the concerns of these gentlemen, they can't wait nine months. What can we do to speed it up? And that you may not have an answer for, but I think that's part of the problem. And as a lawyer, I can tell you my clients are screaming at me after four months. They're like, this happened at Easter, and here it is September and kids are going back to school and you haven't done anything. What can we do there?

JIM LIVINGSTON: Senator Flood, I mean, you're very familiar with the circumstances and problems that occur in the circumstances. And...

SENATOR FLOOD: And that's not a court issue. I think, a lot of times, it's lawyer issue.

JIM LIVINGSTON: It's, yeah, it's an issue of parties involved and resources available and the ability to apply those resources to the problem. One thing, I think, definitely, is putting the jury system into this mixture will do nothing but delay this matter even further. You could go to every one of the 12 judicial districts in the state and probably every court in which a separate district judge sits and get 12 different time tables as to when these things occur.

SENATOR FLOOD: You're right, there. I guess...

JIM LIVINGSTON: And it's a scheduling problem, you know, sometimes to a great degree. Sometimes it is. Sometimes,

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it's other problems that occur.

SENATOR FLOOD: I guess, I appreciate that. One of the questions I have, as a district court judge, when you see somebody that's, by the evidence, clearly trying to frustrate the noncustodial parent or an action that's so egregious, if you had the evidence presented in a more timely manner, and it wasn't a burden on the court to be able to get that sped up, it's been my experience that district court judges do come down pretty hard on that custodial parent that is the bad actor, acting in bad faith. I've never noticed a reluctance on the district court judges not to punish somebody that is clearly trying to frustrate the process.

JIM LIVINGSTON: And I can only speak personally, but there is no reluctance. You know, I firmly believe and have told individuals in custody battles that both the custodial and the noncustodial parent has an equal right to share, not necessarily in the time of the child on a 50-50 basis, but to share in the life's experiences of the child, the victories, the good times of the child, the bad of the child, the disappointments of the child, the discipline and school problems of the child. They have the right to share that information and laws, procedures, are in effect to enforce that right going all the way, as I'm sure you know, to changing custody if it's in the best interest of the child if the custodial parent is not giving the child the right to have both parents involved, which we have seen occur. But again, the tools are available to address these issues. Resource wise, time wise, it becomes a problem. Throwing right to trial by jury into the mix does nothing but compound grievously the problem.

SENATOR BOURNE: Thank you. Are there further questions for the judge? Seeing none, thank you.

JIM LIVINGSTON: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in opposition. Welcome.

KATY MICHAELIS: (Exhibit 3) Good afternoon, Senator Bourne, members of the committee. My name is Katy Michaelis, M-i-c-h-a-e-l-i-s, and I'm an intern at Nebraska

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Appleseed with a particular interest in child welfare issues. I'm here today to ask the committee to indefinitely postpone this bill. Currently, Texas is the only state that allows trial by jury in custody cases. Despite this statute passing in 1961, in 2003, less than 1 percent of child custody cases were decided by a jury, maintaining that the majority of Texas families are opposed to trial by jury in a child custody case. When determining custody arrangements, courts are asked to consider the best interest of the minor child. It has been argued that a jury made up of community members, some of whom are mothers and fathers themselves, are better suited to make this determination. However, stronger arguments supporting the current system of bench trials exists, especially when focusing on the best interest of the child. These arguments include cost, time, a jury's ability to decide on impulse or prejudice, the privacy of a child's testimony, and the emotional issues surrounding a divorce, and the tendency of jury trials to become highly political. Moreover, the reasons cited for using a trial by jury in child custody cases includes the jury being influenced by social factors about one party, and personal opinions about family and location. These benefits not only fall into the politics of a trial by jury, but also take the focus away from the best interests of a child. Nebraska Appleseed's child welfare program is committed to the children of Nebraska and works to support policy reform in the best interest of children. We believe that this bill detracts from the interests of the children for the reasons mentioned, and therefore we ask you to indefinitely postpone LB 886. Thank you. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Ms., is it Michaelis?

KATY MICHAELIS: Um-hum.

SENATOR BOURNE: Michaelis. I'll ask a quick one. Do you think that there's a problem with the system? The reason I say that is, you know, we deal with a lot of issues down there. There's none more emotional and heart-tugging and all these things than this one. And, I mean, I can remember years ago, several years ago, being on the Judiciary Committee with Senator Brashear and it was standing room only on a child custody issue. Not a jury trial, but a similar situation where a lot of noncustodial parents, both

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male and female, feel that the system did them wrong. And I find it compelling. I don't have personal experience in this area, but I, you know, I find it compelling. So do you think the system, there's problems? And do you think we have an obligation to fix them?

KATY MICHAELIS: I definitely think that's something that should be looked into because I know there are personal experiences where people feel that they've been wronged by the system. I just don't believe that having a trial by jury would fix those problems.

SENATOR BOURNE: Further questions? Thank you. Next opponent.

JIM GORDON: Good afternoon, Chairman Bourne, members of the committee. I'm Jim Gordon, G-o-r-d-o-n. I'm a practicing attorney in Lincoln, Nebraska, have been for 32 years, have tried numerous cases in Lancaster County, and family law cases in many of the counties of the state. I used to practice jury trials, practiced before juries. I'm here today as the secretary of the Family Law Section of the Nebraska Bar Association here in opposition to LB 886. Basically, what I'd like to give you is just a brief practicing attorney's perspective of what would happen if we used juries to decide custody cases. In Lancaster County alone, there are seven district court judges and I believe four county court judges, all of whom can hear custody cases in Lancaster County. I would guess that it's a high 99 and one-half percent being tried in the district court. Each of those judges sets trial terms each month. Judge Cheuvront, for instance, just completed or just will have a three-day trial term February 14, 15, and 16. He will dispose of approximately 17 or 18 cases during that term. Many of those cases are custody cases. If any one of them required a jury trial, the other 15 or 16 cases would not be able to be heard during that period of time. It will take just that long. The reality is that we have good judges, and we have judges who aren't as good, and there are problems. I admit that these gentlemen are here because they're complaining about particular cases. A jury trial to make that decision on child custody will not resolve those issues. I'm also concerned that while a jury trial takes time, strangely enough, a decision by a judge might be longer in coming than is a decision by the jury. The jury

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sits, it deliberates, it decides, but they will not have had the benefit of numerous pages of reports from psychologists, from other people interested in the well-being of that child. The jury can hear the testimony, but they will not have those reports to read. They will not have time to read them. A judge takes that time. My concern, having represented moms and dads and representing children as guardians ad litem is that the child needs to have someone not only familiar with the case, but familiar with the panoply of those kinds of cases coming before him or her. And those are our judges. By and large across the state, I don't know any bad judges. There were some. They're gone. The judges we have now are conscientious. They do the best that they can with a huge case load at a very little time to decide each case, but they do a very, very good job.

SENATOR BOURNE: Thank you. Are there questions for Mr. Gordon? Thank you.

JIM GORDON: Thank you, Senator.

SENATOR BOURNE: Other testifiers in opposition? Are there testifiers neutral? Come on forward. Have you signed in, sir?

ERNEST KUBR: Yes, I have.

SENATOR BOURNE: Okay. I'll tell you, if you just set them...welcome.

ERNEST KUBR: (Exhibits 4, 5) Good afternoon. Thank you, Senator Bourne, members of the committee. My name is Ernest Kubr, last name is K-u-b-r. I live in Papillion. I'm neutral on this bill because I don't think it will make any difference one way or the other whether you pass it or not. For the people who want a little bit of fairness in the system, I totally understand what they want. This is a desperate grasp to try and get some fairness in a system that has ignored the needs of children of this state. If this bill does pass, what you will have is a two-tiered system of justice, and the reason Texas only had about 1 percent of their custody cases go to jury trial was the vast majority of families cannot afford a jury trial. This would be a system that only those who have the means to exercise it would be able to. It's at a time when people

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are expending vast amount of resources on legal fees. They have the expenses of now maintaining two households instead of one, and all of this takes money and time away from the children. So if the purpose of this legislation is to enrich members of the bar, delay justice in the courts by dragging things out through jury trials, and give the opportunity for a little bit of fairness by having several people look at the facts of the case and decide based on that rather than one person, yeah, it should pass then. But if you truly want fairness in the system, there are several bills that have been proposed in the past. One that I am working on to present next session is presumed joint custody. The handouts that I have given you show that there is numerous government statistics, and this issue has been studied for over 20 years regarding the benefits of joint, shared parenting and the effects of single-parent homes on children. If you pass joint shared parenting, you will see problems with drug abuse go down, problems with all kinds of juvenile issues. Children do better psychologically, emotionally, and everything else in cases, even according to the American Psychological Association, their study in cases where parents have virtually no communication, children still do better. Courts regularly ignore laws on the books in Nebraska. They ignore U.S. Supreme Court case law, which is to a certain extent in another handout I gave you on the constitutional right to be a parent. The court has routinely ruled that when a parent is fit, they have the fundamental liberty to raise their children as they see fit. But if you have two fit parents, one of their rights is always violated when shared parenting is not ordered. The opportunity is there in Nebraska statutes, but routinely judges ignore it. They may order it, as the judge stated. Sometimes they do order it in the cases where parents disagree. But the vast majority of times, one parent's rights are violated without any due process or cause. They're not adjudged mentally incompetent. They're not a felon. They're not a danger to themselves or others. They are a fit parent. But you have a person who does not know the children, who have never met the children, who most times don't want the children on the stand and admonish a parent for putting them on the stand because they say you're putting a child in the middle. They don't want to hear anything about the child's wishes. And they are going to make a decision what's best for that child that they've never met? In some cases, they will keep the children in

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the custody of the court and openly state, this parent is a basket case. I don't trust you, but I'm going to give you custody. I'm going to place possession with you and I'm going to keep legal custody with the court because I don't trust you, and this is to hold a hammer over your head. And when problems arise, nothing is done. You come back to court, spend money, the judge admonishes you for wasting the court's time. They are criminal court judges who have the attitude that when two parties walk into their court, one is guilty, one is innocent, one is the perp, one is the victim. And most judges are not trained in family matters. They're desensitized to the issue.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kubr. We'll take these documents. We'll make that part of the file because I think we will look at those.

ERNEST KUBR: Okay. I did hand him nine copies. There's one extra for the record.

SENATOR BOURNE: Appreciate it. Thank you. Next testifier in a neutral capacity. Is this our last testifier? We have one more neutral testifier after this gentleman? Welcome.

JEFF BETTENHAUSEN: Thank you. My name is Jeff Bettenhausen from Norfolk, Nebraska, B-e-t-t-e-n-h-a-u-s-e-n, and like to thank everybody on the committee for this opportunity to speak. I appreciate the passion on both sides, those for this bill and against. I believe the gentlemen that are here in support of it, in their heart, they believe they're doing the right thing. And I believe that in many cases a jury trial would be better, but I see the added cost as being an issue. Our courts are inundated with the drug situation we have with the meth. There's talk of expanding the drug court in the state. That's going to take funds. And, really, I think that the best scenario to make a joint custody the default custody in this state when both parents are fit and proper people. And if we do that, then we free up the courts to handle these other cases. And in cases when both people are fit and proper people, we allow both parents to maintain a continual relationship with those children. Those children are going to be less likely to get involved in drugs, more likely to be involved in activities and do well in school and all of those things. Right now, one parent often times is given custody. Another parent is

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left a visitor, maybe two hours a week and every other weekend, maybe every other weekend. That's simply not enough time. And that's why the Teammates mentoring program has been such a powerful thing here in the state. It's to take the place of either parents that have chosen to walk away or kids that just don't anybody in their lives that really to look up to. And there are a lot of parents out there that want to be that role model. They want to be that mentor. They want to be parent. But unfortunately, right now, they're not allowed to do such. So, I appreciate this bill. I think the, what they're trying to accomplish I think is noble. They're trying to help the kids of this state. But I think there's a better way to do it, and that would be to make the default judgment in custody disputes a shared parenting arrangement. And that's all I have to say, I guess. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Bettenhausen? Seeing none, thank you. Appreciate your testimony.

JEFF BETTENHAUSEN: Um-hum.

SENATOR BOURNE: Next neutral, or last neutral testifier.

PHIL LABADIE: My name is Phil, P-h-i-l, Labadie, L-a-b-a-d-i-e. Thank you for hearing our testimonies today. When I first came here, I was more for this. But after listening, I've changed to more of a neutral because it's very clear at this point that the problem is with the system and not necessarily with how the system is handled, or how the cases are handled. And like in my case, you know, I feel my children were taken from me, and I'm just able to visit. And they're with a parent who is actually moved in and cohabitating with another man, who has actually more time than I do with my own children. And I think there's something wrong with a system that allows that to happen. I'm their father and my children want to be with me as much as they want to be with their mother. But because of the way the system is, I've been, just like many other people, and this goes both ways, men and women, I've talked to many people, have been put through a system that it takes so long to do anything, that by the time you get to trial, and I've even gone to trial where decisions were made at the last minute, and you don't really have any time to think or make,



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you know, proper decisions. So it's the system that's unfair, and I don't know, I heard, I think Senator Flood talk about how sometimes the attorneys can create a lot more turmoil than what's necessary. I'm a business person and I'm very logical in my thinking, and if someone tells me, you're going to go in there, Phil, and you're going to get killed. You know, then, if that's the way the system, I just have to accept that. So I think the change really needs to be in the process in the divorce because, just because my ex-wife and I choose to be divorced doesn't mean I want a divorce from my kids. I do understand, and we get to the best interest of children, maybe it is better for them to be in one home or the other, but I think the visitation is very unfair. So, I think, what it really gets down to is each situation is unique and different and that's why, at first, a jury trial seemed logical. But on the flip side, and after being through this process so many times, I think it would just create more turmoil, especially for the children. I really do care about the well-being of my children. But right now, I do not feel that their best interest has been or is being administered to them right now. And they cry out to me all the time. Any questions?

SENATOR BOURNE: Thank you.

PHIL LABADIE: All right.

SENATOR BOURNE: Are there questions? Seeing none, appreciate you testifying. Last call for neutral testifiers. Senator Fischer, she has waived closing. That will conclude the hearing on Legislative Bill 886. (See also Exhibits 1, 14) My understanding is Senator Foley is currently introducing another bill in a different committee, so we are now going to open on Legislative Bill 1144 with Senator Aguilar. And I'll tell you, if the audience that doesn't want to participate in the next hearing would make their way out. Gentlemen. Gentlemen. We're going to continue the hearings, so if you'd move out into the hallway to discuss, thank you. Appreciate your attendance. Senator Aguilar, welcome.

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SENATOR AGUILAR: Thank you, Senator Bourne, fellow members.

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I'm introducing LB 1144 because through various conversations I became aware that there is no standardized death investigation protocol specific to the death of a young infant or child. Some individual law enforcement departments have developed these protocols, but they aren't necessarily the same from department to department, and nothing has been implemented statewide. Why is this important? Because we are missing information that could better help us care for our youngest children. Yes, there's information missing that could help a prosecutor prove a case, but I'm more interested in pieces of information we need to improve our prevention efforts and our systems response to child abuse before it turns fatal. I asked the Attorney General's Office to assist me in looking into this issue because county attorneys play such a large part of these investigations. What we developed was a subcommittee of the Commission for the Protection of Children that is looking into a myriad of issues surrounding child deaths. This group includes representatives from law enforcement, prosecutors, social workers, Health and Human Service Administration, my legislative aide, and others. They have met for the last year looking at various issues surrounding the death scene investigation of children. This committee has a preliminarily set of protocols they will refine and offer to law enforcement to use the investigation and documentation of the scene of a death of a child. However, many other issues are involved. A lack of pediatric forensic pathologists, sudden infant death syndrome, methamphetamine, the role of the county multidisciplinary teams, the state death review teams, and others. LB 1144 is our attempt to address some of the concerns we see that could be addressed legislatively. LB 1144 will (A) provide county attorneys, who are by statute the county coroner, some guidance on what to request and look for in autopsies. Current law states that all sudden deaths of minors require autopsies, with an exception for accidents and obvious diseases. But autopsies are not always performed. Even when an autopsy is performed, it may not include tissue samples and toxicology tests that can be key in determining the cause of death and in prosecution. And (B) address the fact that Nebraska continues to have a SIDS rate higher than the national average. As Hall County Sheriff Jerry Watson said in his letter (Exhibit 7), and I will hand this out, "SIDS has become a dumping ground for unexplained death that occur in this age bracket." Without a complete analysis

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that includes a full autopsy, medical records review, and death scene report, a SIDS determination does not meet the recommendations of the Centers for Disease Control. LB 1144 would make these three steps mandatory. (C) Address the cost associated with complete autopsies by offering to reimburse counties for up to 50 percent of autopsies on children five and younger. That age category was chosen for emphasis because these children are the most physically vulnerable and the most isolated from societal interaction. Therefore, they are most at risk for abuse that could go undetected. They also have the highest death rate. (D) The Child Protection Cash Fund in the Attorney General's Office is suggested as the mechanism for this reimbursement. Currently, this fund is used to pay for expert witness expenses. An autopsy finding is an extension of an expert witness, if you will, and I feel appropriate for this reimbursement. This cash fund ends and the funding becomes a budget item in Fiscal Year 2006 and '07, with an earmarked \$80,000 from the General Fund. I would like to increase the funds available to the Attorney General to cover the reimbursement for certain autopsies. Statistics from Health and Human Services show that historically there are about 100 deaths of children age five and younger per year in Nebraska. To fund 50 percent of the 100 autopsies at approximately \$3,000 per year, the autopsies would cost \$150,000. The cost of an autopsy is a county obligation, so our idea is give them some relief to encourage proper autopsies without taking over the responsibility. Following me will be Kathy Moore from Voices for Children and Dr. Stacie Bleicher, a pediatrician here in Lincoln. I'd like to thank them for their years of dedicated work on behalf of children in Nebraska. In closing, I would like to say that this bill will make another improvement to our system's response to child abuse. It's not one of the flashier aspects, but it is necessary, and I ask for your support. And I'd be happy to take questions at this time. Thank you.

SENATOR BOURNE: Are there questions for Senator Aguilar? Seeing none, thank you. First testifier in support.

KATHY MOORE: (Exhibit 6) Thank you, Senator Bourne and committee members. I am representing Voices for Children in Nebraska. I'm Kathy Moore, executive director, spelled M-o-o-r-e, and I would like to urge the committee to advance

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this bill. For the last two-and-a-half years, Voices for Children has been examining the issue of child deaths. And as most of you know, we have had what we believe is to be an extraordinary number of deaths for a state with the population and demographics of Nebraska. We documented more than 30 deaths over a three-year period. And in examining those, we find a couple of problems. First of all, we do have a death review team, but they tend to be a couple of years behind in their reviews. And so our ability to measure improvements and progress is hindered by that delay in information. We therefore have to rely on the news media and, if you will, anecdotal information. But we do know in looking at some of the deaths that children like Shane from Grand Island or Samantha from Omaha have experienced death within the last year, and that there have been questions surrounding those deaths which were not easily answered. We also know that counties, particularly small counties, have very limited experience. If we've had 30-35 deaths due to child abuse or a suspicious nature in the last two-and-a-half years, you can imagine how few a very small county has. Nebraska's county coroner systems centers on the county attorney, not a medical professional. So, often, an autopsy being ordered is limited by a county attorney's knowledge or ability to specify what tox screenings need to occur, and maybe additionally hindered by a tight county budget and by urgings from the county board to not spend money. We know for a fact that there are often limitations, for instance, on termination of parental rights proceedings and other things that tend to be high-ticket items. And we know that the level of autopsies, therefore, is inconsistent from county to county. LB 1144 does about three things that I believe will dramatically improve the circumstance. One, of course, is the access to some funding for counties that might be making a decision based on budgetary considerations rather than the facts before them. Secondly, that will insure more consistent autopsies so that 12 months from now, when we finally see that we do need a trial, that this is a criminal offense, we have the information rather than all of a sudden then realizing we've had an incomplete or inadequate autopsy, and therefore lose our criminal case and our criminal evidence because of the type of autopsy that was done initially. And then lastly, it does create some guidelines and protocols under the Attorney General's Office. We've also had other discussions about training and other things that will not necessarily require legislation

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that will begin to elevate the knowledge base and the consistency of these autopsies. So I think Senator Aguilar summed it up very well. This may not be the front page story in terms of legislation passed this year. Absent it, we will continue to have children whose cases are not adequately prosecuted, will continue to have unanswered questions. And with it, while we are probably not going to save the lives that we've lost, I believe it will lead us toward a much better understanding of this situation. And I urge your passage. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Moore? Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Bourne. Ms. Moore, I know you've worked hard on this for years. Can you refresh us a little bit on the types of professional people that are on the Child Death Review Team?

KATHY MOORE: Oh, gosh. It's been a while since I've looked at that. I do know that we have a couple of physicians. It is over...

SENATOR DW. PEDERSEN: Are they pathologists?

KATHY MOORE: I am not aware that there is a pathologist sitting on it. I can look into that and get you that information probably in the morning if that would, I just haven't looked at that lately. I should have.

SENATOR DW. PEDERSEN: Is there a need for our state to start looking at possibly doing something other than having the people do the autopsies other than the county attorneys offices?

KATHY MOORE: I believe there is. I indicate in my written testimony that a group of us have been meeting for several months under a staff position in the Attorney General's Office, and we've been looking at this whole issue. Many of us feel that a different coroner system, actually, one of the things that we've looked at is creating a team of perhaps three experts under the Attorney General's Office who could begin to regionalize a couple of investigative aspects, and yes, that there should be a state medical examiner.

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SENATOR DW. PEDERSEN: Have you got any cases that you're aware of that the, under the current system, that the coroner has not used a medical pathologist to do the post or the autopsy?

KATHY MOORE: I am not aware of any, Dr. Bleicher was hoping to testify, and she may not make it now that we've moved the bill up. She, I believe, is aware of at least one case that had no autopsy, which is another issue.

SENATOR DW. PEDERSEN: That's what I'm, yes, I'm say more worried about than having somebody do a post...

KATHY MOORE: Right. Exactly. I am aware that there's at least one of those cases. I am not aware of any where a pathologist was not a person doing it.

SENATOR DW. PEDERSEN: Thank you.

KATHY MOORE: Um-hum.

SENATOR BOURNE: Thank you. Are there further questions? Seeing none, thank you.

KATHY MOORE: Thank you.

SENATOR BOURNE: Next testifier in support.

GENE KLEIN: Good afternoon. I'm Gene Klein, G-e-n-e K-l-e-i-n. I'm the director of Project Harmony, which is a child advocacy center in Omaha. Project Harmony actually coordinates the investigative team, the LB 1184 team, where we call it the multidisciplinary team in the Douglas-Sarpy County area. And in, I am also a member of the subcommittee of the Governor's Commission and looking at this death review investigations. And in the spring of last year, there were 14 child deaths in Omaha that this team investigated. And a large percentage of those children were classified as SIDS cases, children dying of sudden infant death syndrome. And when we, they all did receive an autopsy, but the whole issue of SIDS and child deaths and how can we strengthen the investigations, the crime scene investigation, and the post on those became forward, and then the subcommittee was created. We need to improve the

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quality and the training, too, of the pathologists. I think they're all very good people, but they see every kind of death in the community, and this takes a very specialized training. And this bill would outline some standards for that autopsy. In addition, while no one would honestly say that funding limits their access to an autopsy, in our contacts with other folks across the state in counties where budgets are extremely tight, we think that if there were resources available to counties across the state that that would not be a problem, that having access to an autopsy wouldn't limit their ability to get that done. So I would urge your support. I applaud Senator Aguilar's leadership on this issue. This is an issue that doesn't have a roomful of constituents. We're talking about small children, dead children, and so there's not a constituency here that's going to jump up and down and get your attention. So we hope that you would move this bill forward and that you would be leaders for the children. I'd be open to any questions.

SENATOR BOURNE: Thank you. Are there questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Mr. Klein, who do you work for?

GENE KLEIN: I'm the director of Project Harmony. We are a child advocacy center in Omaha and do medical exams and interviews.

SENATOR Dw. PEDERSEN: Okay. I just missed that. I know what Project Harmony is now that I hear it. Are you on the review team?

GENE KLEIN: Yes, I am.

SENATOR Dw. PEDERSEN: Do we have any pathologists on the review team?

GENE KLEIN: Well, I'm on the Douglas County local team, which reviews active cases of all child deaths, all sexual assaults, all life-threatening neglect and serious injury. And we do not have a pathologist on our local team.

SENATOR Dw. PEDERSEN: Do we have any pathologists in Nebraska that are trained in doing child posts, autopsies?

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GENE KLEIN: No. Not at this time that I'm aware of.

SENATOR Dw. PEDERSEN: Have any of them had any specialized training at all?

GENE KLEIN: Not that I'm aware of. I know that Doctor...

SENATOR Dw. PEDERSEN: Okay, so we're using the same pathologists that are doing car accidents, homicides, and...

GENE KLEIN: ...yeah. Dr. Roffman in Omaha and Dr. Jones are very good pathologists. I think just would spell out some standards for how to handle these particular cases.

SENATOR Dw. PEDERSEN: If this bill passes, does Dr. Roffman and Dr. Jones have to go back and get some specialized training?

GENE KLEIN: Probably, or would at least follow the protocols that would be outlined by the Attorney General's Office.

SENATOR Dw. PEDERSEN: And my understanding is Douglas County is supporting this bill.

GENE KLEIN: Yes.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Are there further questions? Mr. Klein, let me ask you this: It seems like what we're trying to do with LB 1144 is to accurately classify those deaths that are truly SIDS versus some other cause. And then, yet, I look at the chart that was handed out regarding the number of SIDS cases in Nebraska relative to the rest of the country. What are we, if you know, what are we doing as a state to, you know, catch this on the front end versus this bill?

GENE KLEIN: Right. That's a very good question. When this issue came up, we took kind of two different approaches. One is, how can we improve the investigation after the fact? And then what do we need to do to get more education and information to people in the community? In Omaha, we



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partnered with Douglas County Health Department. They have a safe sleep initiative--we weren't aware that they even had a program--and brought them into the conversation, and have since launched, they've gotten some additional funding and have really launched a public awareness campaign to get parents, well, for example, not sleeping with your children. A number of these cases were parents that were falling asleep in bed with their small infants. And the question of, did they roll over on the child or was this SIDS, was a real critical question. So the Douglas County Health Department has helped us really get awareness out there about SIDS and some prevention and Back to Sleep initiatives, along with don't sleep with your child because it could cause the death of your child.

SENATOR BOURNE: We still don't know what causes SIDS.

GENE KLEIN: We do not.

SENATOR BOURNE: We don't. Have we seen the rate decline at all, I mean, or is it still spiking up?

GENE KLEIN: Well, the Back to Sleep campaign, which was initiated ten years ago, which was a SIDS prevention program, clearly shows that there are ways you can prevent SIDS by putting your kids on their back to sleep. And the rates really went down over the last ten years, the fact that we're seeing that problem here in Nebraska, we think it's more about a classification of SIDS and the investigations not maybe being as strong as we could make them, not necessarily it being a bigger SIDS problem in Nebraska.

SENATOR BOURNE: Understood. Okay, makes sense. Other questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Klein, if you people have a question about an autopsy, where would you take that question to?

GENE KLEIN: That's a good question. Directly to the pathologist, the investigators who are on the case would go directly to the pathologist.

SENATOR Dw. PEDERSEN: So if there was such a case as

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getting a bad autopsy or bad post, you don't really have anyplace else to bump it up to another step. Is that right?

GENE KLEIN: No. Not outside of a medical expert in another state, maybe, but...

SENATOR Dw. PEDERSEN: You'd have to bring somebody in, and by that time, you're, how long does it take for you to review a case?

GENE KLEIN: Well, we review them the day or within a day or two of the death, so, immediately it's...

SENATOR Dw. PEDERSEN: Do you actually read the results of a post?

GENE KLEIN: I, yeah, I don't routinely, but the team does, yes. It's part of their investigation.

SENATOR Dw. PEDERSEN: And if they had a question, most of the time, they take it back to that physician...

GENE KLEIN: Right.

SENATOR Dw. PEDERSEN: ... who did the post. And you don't have, do you have the authority to take it above or ask for somebody at the...

GENE KLEIN: Could, but I think we work, most of the folks that are doing these investigations are not physicians, they're not pathologists. They're policemen, they're child protective service investigators, social workers, and so for them to know which tox labs to call for or which screens should be done, that's kind of outside the scope, really.

SENATOR Dw. PEDERSEN: Has there been anybody, has there been more research in the field to see what they're doing in other states and how they handle these cases?

GENE KLEIN: Yeah. That's part of what this team that Kathy Moore and I and the Senator's aide are looking into. How are other states handling this?

SENATOR Dw. PEDERSEN: Thank you.

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SENATOR BOURNE: Further questions? Seeing none, thank you. Appreciate it. Other testifiers in support? If you just set the handouts on the edge of the desk, they'll handle that.

JON EDWARDS: (Exhibit 8) Good afternoon, Senator Bourne, members. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I am here today representing the Nebraska Association of County Officials. We are here today in support of LB 1144. We agree with the underlying principle of the bill. We do, however, just have one change that we'd like offer for the committee's consideration, and that's attached to the letter that's being handed out. Within the bill, there is a funding mechanism in subpart (3) that allows for up to 50 percent, to request up to 50 percent on all autopsies performed on individuals under the age of 19. This proposed language would change that, and put in place a requirement that there be a 50 percent reimbursement on all autopsies only on children five years of age or younger. And that seems to be where the focus of this is at. And it seems like the language within the bill is a little bit broader than that and it's a bit more permissive than this. We just focused that a little bit more. Aside from that, we are in support of the bill. This is an issue that needs some attention, so with that.

SENATOR BOURNE: Are there questions for Mr. Edwards? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. I didn't get your name.

JON EDWARDS: Jon Edwards.

SENATOR Dw. PEDERSEN: Mr. Edwards, what attorneys office are you?

JON EDWARDS: I'm with the Nebraska Association of County Officials.

SENATOR Dw. PEDERSEN: But what county are you with?

JON EDWARDS: I work for the association that represents all the...

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SENATOR DW. PEDERSEN: You work at just the association. Okay.

JON EDWARDS: Yes. Yes, sir.

SENATOR DW. PEDERSEN: You're not an attorney yourself?

JON EDWARDS: I am, yes.

SENATOR DW. PEDERSEN: Do we...

JON EDWARDS: I do not act in a capacity as attorney for the association. Okay?

SENATOR DW. PEDERSEN: Thank you. Thank you. No further questions.

SENATOR BOURNE: Thank you. Further questions? Seeing none, appreciate it. Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Aguilar to close.

SENATOR AGUILAR: Thank you Senator Bourne and members. First, I think I'd like to address that last amendment. And I've had other counties come to me and say they're very supportive of this, not just the association, but individual counties come and say they're very supportive of this, but they were wondering, possibly, could we change it to 100 percent rather than 50 percent. First, I just like to say, it is the counties' responsibility to perform autopsies, so it's not like we're doing anything new. We added the 50 percent reimbursement kind of as a carrot just to make sure that they actually do happen when budgets are tight. And the reason we probably won't go to a higher percentage or say "shall" is simply because there's a certain amount of money the Attorney General's Office has, and when what that runs out, it's gone. And we can't really commit them to money they don't have. That's kind of the reasoning behind that whole process. The question about pathologists, Senator Pedersen, I am not positive, and I will research this and confirm it, but I'm pretty sure there was a pathologist on the Child Abuse Task Force that I served on that offered input into the scenarios on, when it come to suggestions as what we should do and what particular types of legislation should be introduced, and some of them

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which I've been working on the last couple of years. I would ask the committee to really consider this. And if there's a possibility that the committee could support this unanimously, I would ask that they consider it as part of the priority package. As far as legislation, this is important legislation, necessary legislation for the protection of children in the state of Nebraska. I really feel strongly about that and hope you all look at it the same way. And thank you for your time today.

SENATOR BOURNE: Thank you. Questions for the Senator? Seeing none, thank you. Before we conclude this hearing, I wanted to mention that if Dr. Bleicher has written testimony that she would enter in the record, we'll keep it open for a few days, but we'd like to have that. With that, that will conclude the hearing on Legislative Bill 1144. (See also Exhibits 12, 13) Senator Foley is here to open on Legislative Bill 1263. As he makes his way forward, can I have a show of hands of those folks here to testify in support on this next bill? I see one. Those in opposition? I see none.

LB 1263

SENATOR FOLEY: Thank you, Mr. Chairman, committee members. For the record, my name is Mike Foley. I represent District 29 in the Legislature. And I come before the committee with a bit of reluctance because the bill that I'm offering to you takes me into an area of the law where I have virtually no experience. This has been sort of a learning experience for me. When we were still within the first ten days of the session and were still had the opportunity to offer new bills, a gentleman came to me, a Mr. David Whiteside, who you're going to hear from in just a moment, very late in this process and told me of a problem he was having, and I agreed to put a bill in to try to help him and perhaps others who are similarly situated. And hopefully this bill or some amended form of this bill can be of assistance to Mr. Whiteside. Mr. Whiteside is a Gulf War veteran who is experiencing some serious difficulties paying child support due to a service-related illness. And as I understand his case, and he'll tell you more about it, when his divorce proceeding was initiated, the court established a certain level of child support, hundreds of dollars. As

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that proceeding unfolded, the court realized that that figure was far in excess of his ability to pay, so the court lowered his child support obligation. But apparently, there's some legal difficulties with the court having the ability to retroactively amend the arrears that ensued because he was not paying the full amount of child support. He couldn't, and the court knew that. This bill tries to fix that problem. It's not intended in any way to let deadbeat dads get off the hook from paying their child support. That's not what this is about at all. This is simply an opportunity for some legislation to allow the courts to retroactively forgive arrears that they now acknowledge were because of the fact that child support was simply too high. And that's what this is about, and Mr. Whiteside is here. He'll tell you more about this case and why he needs this bill.

SENATOR BOURNE: Thank you. Questions for Senator Foley? Thank you.

SENATOR FOLEY: Thank you.

SENATOR BOURNE: First testifier in support. Welcome.

DAVID WHITESIDE: Thank you, Senator Bourne, committee members. My name is David Whiteside. As Senator Foley has introduced the bill, to pick up where he left off, there were several problems over the last two years. I've been in and out of the VA Hospital and unable to hold a full-time job. My case was in Nemaha County, which was ruled by the judge as, I could have, should have, and would have been able to work full-time. Because I was on a top-secret aircraft in Desert Storm and Desert Shield similar to the 130 that Osborn had crash-landed, this was a top-secret aircraft, because I was in a place and time that we weren't supposed to be on an aircraft, that isn't acknowledged by the U.S. government as what we have, I was denied all my disability benefits. For to give me my disability benefits, the government would have to acknowledge the RC-135 did, indeed, exist and we were over Baghdad at the time we were shot down. Following this, the ruling by Judge Bryan in Nemaha County came down that because I was not "disabled," which was denied me by the federal government because of the conditions that we were under, that I could have and should have paid full-time or being able to work full-time in child

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support. There are many misconceptions I've heard going around the capitol that this does not meet federal law. This meets exactly federal law. It is in paragraph C, which states that no state shall retroactive the child support except from the time that the modifications have been entered in court to the time the modifications have been ruled on. The difference in this case was \$311 to \$74 a month, which under the Supreme Court of the state of Nebraska is the basically poverty or Section R is the poverty code, which I was under the two years I was in and out of the VA Hospital. The problem exists is when judges do not rule that the level of income that you can support is adequate for child support. The problem interjects with the judge's ability when they do not rule according to the Supreme Court guidelines of income. Therefore, but the state has been very hard-nosed about correcting the arrears to what the actual guidelines should have been for my income underneath the Supreme Court state of Nebraska guidelines. Like I said, there's been many misconceptions. This is not, you know, I love my son. It's my only son. I'd never hurt him. And I paid what I could. However, the difference was \$220 a month compounding 4 percent interest over two years while I was in and out of the VA Hospital, and getting the child support actually corrected to the income levels it should have been. Me and many other people have had this problem. There's also many misconceptions about different laws, that Social Security Act has something to do with child support arrears act. It doesn't. There's no relevance in these laws. There is nothing that addresses it. The state of Nebraska has nothing in its arrears laws that says, hey, you know, to correct the imbalance in the law. Thank you.

SENATOR BOURNE: Questions for Mr. Whiteside. So just for clarity, oh, I'm sorry. Senator Friend.

SENATOR FRIEND: No, I'm sorry, Senator.

SENATOR BOURNE: Just for clarity, you were responsible to pay a certain amount, and that ultimately, it turned out it was \$220 per month higher than you actually are liable for, for about two years. So you owe \$5,000 or so in arrears. But the reason that that was a problem was because you were over in the Gulf and there's no mechanism to waive or write off that "arrearage."

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LB 1224, 1263

DAVID WHITESIDE: If I may point it out, there was a difference of \$220 a month compounding 4 percent interest per month between the \$311 that I was supposedly able to pay as a full-time, working full-time. What I'm supposed to pay is \$74 a month. The problem now arises that it's very close to \$5,000. I'm supposed to pay \$74 a month under Section R in the poverty income level. The problem is the state is now charging me over \$250 a month in interest with the 4 percent compounded interest.

SENATOR BOURNE: All right. And can't get out from under it.

DAVID WHITESIDE: And to compound it, the state has taken my driver's license away. And now that I am able to work, I can't get to a job. I have no driver's license. They're taking my state income tax, jail time, all because the state refuses to accept the exception within the section of, it's in paragraph C. It's a major exception that says during litigation you can adjust the arrears, according to federal law.

SENATOR BOURNE: Any other questions? Seeing none, thank you.

DAVID WHITESIDE: Thank you.

SENATOR BOURNE: Are there other testifiers in support? Are there testifiers in opposition? Are there testifiers neutral? Senator Foley waives closing. That will conclude the hearing on Legislative Bill 1263. The committee will stand at ease. We're going to stand at ease for about ten minutes.

RECESS

SENATOR BOURNE: The Judiciary Committee's legal counsel, Michaela Kubat, to open on Legislative Bill 1224, the Judiciary Committee Bill.

LB 1224

MICHAELA KUBAT: (Exhibit 9) Good afternoon, Senator Bourne



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and the Judiciary Committee. My name is Michaela Kubat, K-u-b-a-t. I am Judiciary legal counsel and I'm here to introduce LB 1224 on behalf of the Judiciary Committee. Legislative Bill 1224 makes changes to the State Disbursement Unit and Child Support Advisory Commission. The Child Support Advisory Commission was originally created 1999. The impetus to create the commission came from senators bombarded with child support matters. People wanted to offer public testimony and recommendations to the commission. In turn, the commission provided recommendations to the Supreme Court. The commission acted as an additional review mechanism for the child support guidelines. In 2000, LB 972 created the State Disbursement Commission to monitor the implementation of the State Disbursement Unit created in LB 637. Once the transition from a county based to a statewide system had begun to smooth itself out, the purpose of the State Disbursement Commission had ceased. In 2002, LB 1062 combined the Child Support Advisory Commission with the State Disbursement Unit Commission to address all child support matters in the state. After the commission did extensive work with consultants in 2002 and made recommendations to the court for changes in the child support guidelines, the commission stopped meeting. Although the commission is required to meet quarterly, the commission has not met since 2002. Legislative Bill 1224 will provide that the Child Support Advisory Commission meet when the Supreme Court notifies the executive board of the court's intent to review the child support guidelines. Legislative Bill 1224 also makes changes to the membership of the Child Support Advisory Committee and narrows the scope of the previous commission's duty to only reviewing the child support guidelines and making recommendations to the Supreme Court. The commission can hire a consultant to make economic and statistical recommendations to the court, and may conduct statewide public hearings. In conclusion, I have an amendment here, AM2155, to hand out to you, and it makes a technical correction on the bill. I urge the committee to advance LB 1224 as amended, and I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Ms. Kubat? Seeing none, thank you. First testifier in support.

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JANICE WALKER: Good afternoon, Senator Bourne, members of the committee. My name is Janice Walker. I'm state court administrator and I am the person under the Supreme Court rules who is responsible for reviewing the Supreme Court child support guidelines every four years. I'm here supporting LB 1224. I believe that the changes that this bill makes to the existing commission are going to make a much smoother process. Having this commission in place to do statistical analysis, to take public testimony, and to do it in a time frame which then can aid the Supreme Court in their review of the child support guidelines is going to be very helpful in my opinion. Legislative staff have worked to make this commission, I believe, much more workable. And I strongly support passage of this legislation.

SENATOR BOURNE: Thank you. Are there questions for Ms. Walker? Seeing none, thank you. Next testifier in support.

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association. On behalf of the bar, we do support LB 1224, the Child Support Commission is an important commission, serves a very useful function. Prior to the commission's creation, I believe that the Supreme Court on its own developed these child support guidelines. And this statute as it now exists was in response to a request on the part of the court that the entity be expanded to include others than the members of the court in determining these guidelines. We support the changes in the bill. Be happy to answer questions you may have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Mueller? Seeing none, thank you. Well, the committee has been joined by Senator Combs from Milligan. Are there other testifiers in support? Are there testifiers in opposition? Are there testifiers neutral? Closing is waived. That will complete the hearing on Legislative Bill 1224. Senator Aguilar, do you want to do this for, I'm up next.

SENATOR AGUILAR: We're now ready to open on LB 1113.

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LB 1113, 1196

LB 1113

SENATOR BOURNE: Thank you, Senator Aguilar and the Judiciary Committee. My name is Pat Bourne. I represent the 8th Legislative District here today to introduce Legislative Bill 1113. This bill changes the word "or" to the word "for" in a statute relating to obscene literature. The sentence will now read, "In all cases in which a charge for a violation of this section is brought against a person who cannot be found in this state, the executive authority of this state may demand extradition of such persons from the executive authority of the state in which such person may be found." I urge the committee to advance this bill. I'd be happy to answer any questions.

SENATOR AGUILAR: Questions for Senator Bourne? Seeing none. Are there any who wish to testify in support of this bill? How about opposition to this bill? Neutral? Senator Bourne waives closing. That closes the hearing on LB 1113.

SENATOR BOURNE: The committee will stand at ease for a moment or two until Senator Flood arrives to open on Legislative Bill 1196.

AT EASE

SENATOR BOURNE: Senator Flood to open on Legislative Bill 1196.

LB 1196

SENATOR FLOOD: Thank you, Chairman Bourne, members of the committee. My name is Mike Flood, F-l-o-o-d, and I represent the 19th Legislative District including Madison County. The purpose of LB 1196 is to eliminate requirements to include Social Security number or specific information regarding a Visa or Mastercard account on court documents in order to protect individual privacy, particularly as the courts move more towards electronic files and web-based filings. The Nebraska Supreme Court has been very serious about moving our state towards e-filing where an attorney in Omaha can practice and file in a court in Nance County, for instance, by using electronic mail to transmit a pleading.

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Often times, especially in a divorce proceeding, in stipulation and agreement, you divide the debts and the assets of a marital couple, and often times you state with very particular information how you identify the account. And often times the account would be listed as the entire Visa card number or the American Express number. And this bill has been introduced in an effort to restrict that type of information from a pleading so that if this information is placed on the Internet, somebody from a different state or across the world or in your own home town couldn't go to the Nebraska Supreme Court web site, pull up your pleading, find out your Visa number, find out when it expires, and start charging on your account. The documents that are included in this bill, the ones that would be subject to the prohibitions on this personal information, would be a decree of dissolution of marriage or legal separation, child custody support order, a petition to establish, register, or modify support order, income withholding order of another state, a domestic relations order, paternity judgment, foreign support order, or order to withhold and deliver. And I think the bill speaks for itself. I don't want to waste the committee's time, but I'd be happy to answer any questions. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Senator Flood? Senator Aguilar.

SENATOR AGUILAR: I see the director of Human Service was concerned that it may be contrary to federal law. Did you do any research on that? Do you know?

SENATOR FLOOD: No, I'm not aware of how this could be, let's see here, I assume you're looking in the fiscal note?

SENATOR BOURNE: It's section 666, Senator Flood. Everybody knows that section.

SENATOR FLOOD: Oh, you're talking about Chapter 42 of the United States code, Section 666, A-13? Of course, I looked at that. Social Security numbers and credit card numbers are two different things. And I don't know that, you know, I think we can still accomplish this bill in e-filing. It's just that we don't have to publish the information over the Internet with the exact account number. So, I guess for the benefit of the court, if they keep a paper file, there's got

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to be a way, and I would be willing to work with the Supreme Court through their rule, and I know that they're looking at this to find a way that we could publish, you could send in your filing, but that it would be restricted from Internet access. And so I appreciate the Department of Health and Human Services efforts. Unfortunately, they didn't get me a copy of this letter, but I'd be happy to work with them.

SENATOR BOURNE: As is so often the case, Senator Flood, with Health and Human Services, you tend to get it about ten minutes after you open on the bill. So you're not alone. Senator Friend.

SENATOR FRIEND: Senator Flood, I notice that right on your desk here there is a letter. It looks like it's freshly printed and waiting for your perusal.

SENATOR BOURNE: The ink is still wet.

SENATOR FRIEND: So if you're curious, it'll be over here when you come back.

SENATOR BOURNE: Are there further questions for Senator Friend, or Senator Flood? (Laugh) It's going down hill from here. Thank you.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: First testifier in support of this bill.

BILL MUELLER: (Exhibit 11) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB 1196. The page is providing you a photocopy of a petition that will be filed by the Nebraska State Bar Association in the state Supreme Court requesting that the court adopt a court rule regarding the redaction of personal information from civil court documents. Attached to that petition is a proposed rule that the bar is being asked to promulgate. The background on this bill, as you've heard from Senator Flood, this really came about primarily when the president of the State Bar Association had a person come up to him, a nonlawyer, and say to him, do you know how much personal information there is about people in court documents--birth dates, Social Security numbers, financial

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document numbers, credit card numbers, dates of birth, home addresses? And the president of the bar was taken aback and said he'd never thought about it. He then called me and we started looking into that. I had the bill drafters do a word search for Social Security number, and came up with many instances in statute, particularly as to court pleadings where Social Security numbers are required to be included. We don't question the necessity of, I assume, HHS Child Support office needing this information. Our concern is there should be a better way to get them this information than to have it published in a court pleading that at some point will be accessible on-line as we go to electronic filing. What our desire is that the committee look at LB 1196, see whether we should include the requirement in statute that Social Security numbers be provided. If you conclude as we have that we should not put that in statute, then empower the court, and we're going to ask the court to do it, ask the court to promulgate a rule saying as to particular types of information. And in paragraph 2 of this handout, we go through the types of information that we're talking about. Minors names, financial accounts, credit card numbers, Social Security number, dates of birth. And I'd be happy to work with HHS. I've not seen the letter either, but we would be happy to work with them to make sure that they get the information that they need. We just think that there has to be a better way to get them that information than to require parties to put that personal information in court pleadings. Be happy to answer any questions you may have.

SENATOR BOURNE: Thank you. Are there questions? Bill, so are you saying the court can do this by rule and we don't need the bill, or what are you saying?

BILL MUELLER: No. Well, I think that we need the bill because there are several statutes that say, the parties shall provide the Social Security number or the court shall include a Social Security number. I don't think that a court rule can nullify that, so I think that what we hope you would do is adopt LB 1196 removing that requirement. Then the next step would be the court would promulgate a rule. If we need to work with HHS, we'd be happy to do that.

SENATOR BOURNE: So is the rule that you handed out here,

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was that in response to or in addition to LB 1196, or you're working independently and saw this or?

BILL MUELLER: It's a part of. What actually happened is when the person approached John Sennett, the bar president, raising this issue, we looked further, and actually, the federal court has a rule very similar to this about redaction because in the federal court, we do have on-line filing of pleadings. They already have this. As our court was looking at that, they concluded that this was an issue that we needed to address. So we've been working with the court on this, and let me just say one more thing, if I may. This petition and proposed rule is not to be an ending point for the rule. It's to be a beginning point. If there are things that need to be addressed in the rule, we're certainly open to that. And I know the Senator has had some experience with Supreme Court rules and...

SENATOR BOURNE: I've found the court to be very receptive as it relates to input on rules, not! You know, it's interesting. It's funny how something simple like this can fall through the cracks. And we had an experience this summer with the bar, actually, who was putting information on-line...

BILL MUELLER: Yes.

SENATOR BOURNE: ...and so, and not deliberately, but just people, we don't, we need to, all of us need to start thinking more along identity theft lines.

BILL MUELLER: I was embarrassed when this issue was raised. It never occurred to me what kind of personal information we do have in pleadings. And the Legislature several years ago did go through the statutes and strike many requirements that the Social Security number be required for this very reason. I think that you probably did not strike that requirement from the pleadings requirements because there is a reason that the child support people need that information. We think there's a better way to provide that to them.

SENATOR BOURNE: Good enough. Further questions? Seeing none, thank you.

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BILL MUELLER: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Flood to close? Senator Flood waives closing. That will conclude the hearing on Legislative Bill 1196 and the hearings for this afternoon. (See also Exhibit 10)